

## APPEAL NO. 93519

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in (city), Texas, on April 13, 1993, with the record closing on May 13, 1993, (hearing officer) presiding as hearing officer. He determined that the respondent (claimant) was injured in the course and scope of his employment and that he timely reported his injury to his employer; however, that the claimant does not have disability as a result of a compensable injury. Appellant (carrier) appeals the findings of fact and conclusions of law regarding the issues of injury in course and scope and timely reporting. The claimant urges that the request for review is not timely and states his agreement with the findings and conclusions of the hearing officer.

## DECISION

Determining that the request for review was not timely filed and that the jurisdiction of the Appeals Panel has not been properly invoked, the decision of the hearing officer has become final pursuant to the provisions of Article 8308-6.34(h).

The contested case hearing was closed on May 13th, and the hearing officer's decision dated May 19, 1993, was filed. Both computer and written records at the Commission show that the decision was distributed to the claimant and to carrier's Austin representative on May 27, 1993, with a cover letter dated May 26, 1993.

In a request for review dated June 23, 1993, but not indicating any dates showing a jurisdictional basis, the carrier appealed the hearing officer's decision on several points concerning course and scope and timely notice. In response, the claimant objects that the request for review is untimely filed. Carrier responds claiming its Austin representative did not receive a copy of the decision until June 8, 1993, sometime apparently after the claimant received his copy of the decision and started to inquire about his benefits.

Article 8308-6.41(a) provides that a party desiring to appeal the decision of the hearing officer must do so not later than 15 days after receiving the decision. (See *also* Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(3), (Rule 143.3(a)(3)). Notices and communications, including decisions of hearing officers, are sent to a carrier's Austin representative. Rule 102.5(b) and Rule 156.1. See *also* Texas Workers' Compensation Commission Advisory 92-07 dated November 3, 1992, wherein all carriers and their representatives were advised that effective November 30, 1992, all documents and notices would be placed in the carrier's Austin representative's box and that no additional copies would be mailed. See Texas Workers' Compensation Commission Appeal No. 93353, decided June 21, 1993.

We note that the cover letter sending the hearing officer's decision to the claimant was appropriately addressed and that the carrier's representative's Austin Central Office box was correctly designated. There is no reason to conclude that either copy of the

correspondence was misdirected particularly since one of the parties timely received the decision and there is nothing to indicate the regular, routine system of placing a copy in the representative's box was not followed. Indeed, the computer and written records would indicate that the normal course of business was followed.

Rule 102.5(h) provides that the Commission shall deem the received date of written communications to be five days from the date mailed (here, placed in the carrier's representative's Austin Central Office box). The decision, according to Commission records, having been distributed or placed in the representative's box on May 27, 1993, and applying the five day deemed rule plus the 15 days for filing an appeal, the last day to invoke the jurisdiction of the Appeals Panel (see Texas Workers' Compensation Commission Appeal No. 92036, decided March 11, 1992) would be June 16, 1993. The request for review is dated June 23, 1993, and is therefore, untimely.

The records of the Commission showing proper distribution of the decision to the carrier's representative's box on May 27, 1993, together with the apparent due course receipt by the opposing party claimant, constitutes probative evidence to the contrary of carrier's assertion that its representative did not effectively receive a copy until June 8, 1993. That is not to doubt the carrier's representative's assertion that a copy was not received by his office as set forth in his affidavit; rather it merely leaves unresolved how and where the document might have become misplaced, mishandled or lost once distributed. Texas Workers' Compensation Commission Appeal No. 93327, decided June 3, 1993. The request for review having been determined to be untimely, the jurisdiction of the Appeals Panel has not be properly invoked. According, the decision of the hearing officer has become final.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Lynda H. Nesenholtz  
Appeals Judge